

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

EXTENDED STAY, INC., et al.,

Reorganized Debtors.

FINBARR O’CONNOR, et al.,

Plaintiffs,

v.

DL-DW HOLDINGS, L.L.C., et al.,

Defendants.

DL-DW HOLDINGS, L.L.C., et al.,

Third-Party Plaintiffs,

v.

CWCAPITAL ASSET MANAGEMENT LLC, et al.,

Third-Party Defendants.

Chapter 11

Case No. 09-13764 (JLG)

Adv. Pro. No. 11-02254 (JLG)

STIPULATION AND ORDER OF DISMISSAL

This Stipulation and Order of Dismissal (the “Stipulation and Order”) is entered into by and among: (1) Plaintiffs The Extended Stay Litigation Trust (the “Trust”) and Finbarr O’Connor, as Successor Trustee for and on behalf of the Trust (together, the “Plaintiffs”); (2) Third-Party Defendants U.S. Bank National Association as Trustee for the Registered Holders of Wachovia Bank Commercial Mortgage Trust Commercial Mortgage Pass-Through Certificates, Series 2007-ESH (the “CMBS Trust”) and CWCapital Asset Management LLC (“CWCAM”) solely in its capacity as special servicer for the CMBS Trust (together the “Third-Party Defendants”); (3) Defendants DL-DW Holdings, L.L.C., Lightstone Holdings, L.L.C., The Lightstone Group, L.L.C., Lightstone Commercial Management, BHAC Capital IV, L.L.C., Park Avenue Funding

L.L.C., David Lichtenstein, Bruno de Vinck, Peyton “Chip” Owen, Jr., and Joseph Teichman (together, the “Lightstone Defendants”); (4) Defendants Arbor ESH II, LLC, Arbor Commercial Mortgage, LLC, ABT-ESI LLC, Guy R. Milone, Jr., and Joseph Martello (together, the “Arbor Defendants”); (5) Defendant Princeton ESH, LLC; (6) Defendant PGRT ESH Inc. (“PGRT”); (7) Defendants Joseph Chetrit, Atmar Associates LLC, Glida One LLC, Mericash Funding LLC and Ron Invest LLC (together, the “Chetrit Defendants”); and (8) F. Joseph Rogers, Dae Hum Kim (a/k/a David Kim), and Gary DeLapp (the “HVM Defendants”) (collectively, the “Parties” and each a “Party”).

WHEREAS, on June 14 and 15, 2011, Hobart Truesdell, in his capacity as the original trustee for the Trust, filed five actions (the “Actions”) (Adv. Pro. Nos. 11-02398,¹ 11-02254, 11-02255, 11-02256, and 11-02259);

WHEREAS, on August 28, 2012, the Bankruptcy Court approved Finbarr O’Connor as Successor Trustee for the Trust, see Case No. 09-13764, ECF No. 1674;

WHEREAS, on November 15, 2013, Plaintiffs filed their Amended Complaint, which remains their governing pleading in this case, see ECF No. 213;

WHEREAS, on January 31, 2014, the Bankruptcy Court ordered that all of the Actions be consolidated into this Adversary Proceeding, i.e. Adv. Pro. No. 11-02254, see ECF No. 232;

WHEREAS, on August 8, 2020, the Bankruptcy Court issued a Memorandum Decision and Order Granting in Part and Denying in Part, the Defendants’ Motions to Dismiss the Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), see ECF No. 319;

¹ This adversary proceeding was originally filed in the Supreme Court for the State of New York, County of New York (Index No. 651667/2011), removed to the United States District Court for the Southern District of New York (Case No. 11-Civ-4549), and then transferred to the Bankruptcy Court. See Case No. 11-02398, ECF No. 1.

WHEREAS, on October 2, 2020, the Lightstone Parties filed their Answer to First Amended Complaint, Counterclaims and Third-Party Claims, which included two third-party claims against CWCAM and the CMBS Trust (the “Third-Party Complaint”), see ECF No. 338, as amended by ECF No. 357;

WHEREAS, on November 20, 2020, CWCAM and the CMBS Trust moved to dismiss the Third-Party Complaint (the “Motion to Dismiss the Third-Party Complaint”), see ECF Nos. 371-373;

WHEREAS, on June 9, 2022, Plaintiffs filed a Motion for Sanctions Against Defendant Polar Extended Stay (USA) L.P., see ECF Nos. 457-459;

WHEREAS, on August 23, 2022, the Bankruptcy Court issued a Memorandum Decision Granting Plaintiffs’ Motion for Sanctions Against Defendant Polar Extended Stay (USA) L.P., see ECF No. 483, including for entry of a default judgment against Polar Extended Stay (USA) L.P.;

WHEREAS, on October 24, 2022, Plaintiffs filed a Proposed Order Granting Plaintiffs’ Motion for Sanctions (the “Proposed Sanctions Order”), see ECF No. 496-1;

WHEREAS, on October 26, 2022, the Lightstone Defendants, Arbor Defendants, PGRT, and Chetrit Defendants filed a joint Limited Objection to Plaintiffs’ Proposed Order for Sanctions Against Defendant Polar Extended Stay (USA) L.P. (the “Joint Limited Objection”), see ECF No. 498;

WHEREAS, on March 29, 2023, Plaintiffs filed a Motion Pursuant to Bankruptcy Rule 9019 and 11 U.S.C. § 105(a) for Entry of an Order Approving Settlement Agreement (the “9019 Motion”), see ECF Nos. 516-519;

WHEREAS, on April 25, 2023, the Bankruptcy Court held a hearing on the 9019 Motion and granted the 9019 Motion in its entirety;

WHEREAS, on May 5, 2023, the Bankruptcy Court entered the Order Approving Settlement of Adversary Proceeding (the “9019 Order”), see ECF No. 526;

WHEREAS, the 9019 Order directed that “Upon the Parties’ compliance with the payment obligations set forth in the Settlement Agreement, the Court shall dismiss the Adversary Proceeding with prejudice, and without costs, pursuant to a separate order that shall be submitted by one or more of the Parties at such time;”

WHEREAS, all remaining Parties to this action have executed this stipulation by and through their undersigned counsel, except Polar Extended (USA) L.P. which the Court has held in default, see ECF No. 483.

NOW, THEREFORE, the following is hereby stipulated and agreed to by the Parties, subject to approval of the Bankruptcy Court:

1. Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7041(a) of the Federal Rules of Bankruptcy Procedure, Plaintiffs’ claims against Defendants, the Amended Complaint, the Actions, and this Adversary Proceeding, are hereby dismissed with prejudice;

2. Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7041(a) of the Federal Rules of Bankruptcy Procedure, the Lightstone Defendants’ claims against the Third-Party Defendants, the Third-Party Complaint, the Actions, and this Adversary Proceeding, are hereby dismissed with prejudice;

3. The Proposed Sanctions Order and Joint Limited Objection pending before the Court relating to Polar Extended Stay (USA) L.P.’s default are hereby moot;

4. The Motion to Dismiss the Third-Party Complaint pending before the Court is hereby moot;

5. Each of the remaining adversary proceedings brought by the original trustee for the Trust, e.g., Adv. Pro. Nos. 11-02398, 11-02254, 11-02255, 11-02256, and 11-02259, is hereby dismissed with prejudice and may be closed; and

6. Each Party shall bear its own costs and attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this Stipulation and Order as of the date set forth below.

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Dated: June 15, 2023

VENABLE LLP

/s/ Gregory A. Cross
Gregory A. Cross
GACross@venable.com
Mitchell Y. Mirviss*
MYMirviss@venable.com
Evan T. Shea*
ETShea@venable.com
750 E. Pratt Street, Suite 900
Baltimore, Maryland 21202
Telephone: (410) 244-7400
Facsimile: (410) 244-7742

-and-

Matthew T. McLaughlin
MTMcLaughlin@venable.com
Michael A. Guerra
151 West 42nd Street, 49th Floor
New York, New York 10036
Telephone: (212) 307-5500
Facsimile: (212) 307-5598

*Counsel for Plaintiffs and Third-Party
Defendants*

*Admitted pro hac vice

KASOWITZ BENSON TORRES LLP

/s/ Robert M. Novick
Robert M. Novick
RNovick@kasowitz.com
Howard Schub
HSchub@kasowitz.com
Andrew R. Kurland
AKurland@kasowitz.com
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700

Counsel to the Lightstone Defendants

DECHERT LLP

/s/ Gary J. Mennitt
Gary J. Mennitt
Gary.Mennitt@dechert.com
Shmuel Vasser
Shmuel.Vasser@dechert.com
1095 Avenue of the Americas
New York, New York 10036-6797
Telephone: (212) 698-3683

Counsel to the Arbor Defendants

DECHERT LLP

/s/ Gary J. Mennitt
Gary J. Mennitt
Gary.Mennitt@dechert.com
Shmuel Vasser
Shmuel.Vasser@dechert.com
1095 Avenue of the Americas
New York, New York 10036-6797
Telephone: (212) 698-3683

Counsel to Princeton ESH, LLC

SUKENIK, SEGAL & GRAFF, P.C.

/s/ Douglas Segal
Douglas Segal
Douglassegal@ssglaw.com
450 Seventh Avenue, 42nd Fl.
New York, New York 10123
Telephone: (646) 354-4610

Counsel to the Chetrit Defendants

PORTER WRIGHT MORRIS &
ARTHUR, LLP

/s/ Robert N. Hermes

Robert N. Hermes (admitted pro hac vice)

RHermes@porterwright.com

321 North Clark Street

Suite 400

Chicago, Illinois 60654

Telephone: (312) 444-9660

Counsel to PGRT

/s/ David Elbaum

David Elbaum

David.Elbaum@stblaw.com

Simpson Thacher & Bartlett LLP

425 Lexington Avenue

New York, New York 10017

Telephone: (212) 455-2861

Counsel to the HVM Defendants

SO ORDERED, _

Dated: June 23, 2023

New York, New York

/s/ James L. Garrity, Jr.

Honorable James L. Garrity, Jr.

United States Bankruptcy Judge